

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

SHAWN W. LAIBLY, M.D.,
RESPONDENT.

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FINAL DECISION AND ORDER

ORDER 0008309

Division of Legal Services and Compliance Case No. 22 MED 104

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

Shawn W. Laibly, M.D.
Oshkosh, WI 54904

Wisconsin Medical Examining Board
P.O. Box 8366
Madison, WI 53708-8366

Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190
Madison, WI 53707-7190

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Medical Examining Board (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Respondent Shawn W. Laibly, M.D., (Year of Birth 1966) is licensed in the state of Wisconsin to practice medicine and surgery, having license number 43278-20, first issued on May 16, 2001, with registration current through October 31, 2023. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Oshkosh, WI 54904.

2. At all times relevant to this proceeding, Respondent practiced as an obstetrician/gynecologist at a medical center located in Oshkosh, Wisconsin (Center).

3. On March 23, 2021, Patient A (female born in 1954) presented to Respondent with chief complaints of post-menopausal excessive vaginal bleeding. After a discussion of the options available to address post-menopausal bleeding including office biopsy versus surgery, Patient A opted for operating room-based hysteroscopy, dilatation and curettage. The aim of this procedure was to obtain a sample for pathological testing to determine if Patient A was suffering from cancer, polyps, fibroids, or hyperplasia.

4. On March 30, 2021, Respondent performed the aforementioned procedure. In his Operative Note, Respondent described moving the hysteroscopy through the endocervical canal into the endometrial cavity, encountering “hemorrhagic appearing type of polyp that appeared necrotic,” then “moved into a large area of clot that had the appearance of liver type tissue.” Respondent then described working the hysteroscope posteriorly and encountering “cystic yellow fatty type tissue and streaking white tissue appearing to be adhesion type tissue.”

5. Respondent failed to recognize that the tissue he was describing was Patient A’s bowel. Respondent maintains that he believed he was observing cancerous material. In fact, Respondent had perforated Patient A’s uterus, which can be a known complication of the type of procedure he was performing. Respondent did not stop the procedure nor perform an emergency laparotomy or laparoscopy to explore the injury.

6. Respondent continued by retracting the scope and pursuing a left-sided direction, describing following the posterior wall, encountering multiple small polyps, and not being able to advance further. Respondent removed the scope and used forceps to remove multiple fragments of abnormal appearing endometrial tissue and clot. Respondent then replaced the scope and advanced a MyoSure instrument into the endometrial cavity and began to resect as much tissue as possible before discontinuing the procedure. After removing the scope again, he repeated manual removal with a forceps. Respondent maintains that he was in the endometrial cavity at all times while using the hysteroscope. However, after post-procedure review, he admits that he did not recognize that a perforation had likely occurred with the polyp forceps or curette.

7. Toward the end of the procedure, Respondent was notified by operating staff that the fluid deficit was approximately 1900 cc of saline. Saline was observed on the floor and on the patient’s sheets. This amount of fluid deficit is not considered enough to mandate discontinuation of a hysteroscopic procedure per applicable guidelines. Fluid retention, however, can be the result of a uterine wall perforation. Respondent did terminate the procedure upon learning of the fluid retention.

8. Post-operatively, Patient A experienced increased lower abdominal pain, abnormal abdominal distension, and passed blood clots. Respondent was notified of Patient A’s condition approximately four hours after she had entered the recovery room (at approximately 2:40 p.m. on March 30, 2021). He decided to admit her for observation. At 4:07 p.m., Respondent saw Patient A and discussed with Patient A the possible cause of her symptoms, noting “my working diagnosis is that she has the saline in her abdomen and because it went in so quickly she is tender and distended... I would prefer to not operate so quickly because I think this is fluid.” Respondent also discussed with Patient A the options of returning to surgery or observation, and Patient A opted for observation. Respondent, whose shift was ending, signed out Patient A to his partner. Respondent did not order a CT scan.

9. Patient A's condition worsened that evening and septic shock was suspected. A stat CT scan was ordered by the on-call OB/GYN and was consistent with uterine and rectal perforation. The patient was transferred to the ICU for closer care and monitoring.

10. Eventually Patient A was returned to surgery on the morning of March 31, 2021. Respondent was contacted before the surgery and presented to the hospital and participated in the same. The surgery revealed that Patient A had sustained a posterior full-thickness uterine wall injury and a perforation of the anterior wall of the rectum during Respondent's prior procedure.

11. On April 1, 2021, Patient A died from severe septic shock.

12. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order in part to avoid contested and prolonged litigation.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 448.02(3) and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. Based on the Findings of Fact, Respondent engaged in unprofessional conduct as defined in Wis. Admin. Code § Med 10.03(2)(b) by departing from or failing to conform to the standard of minimally competent medical practice which creates an unacceptable risk of harm to a patient or the public whether or not the act or omission resulted in actual harm to any person.

3. As a result of the above conduct, Respondent is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

1. The attached Stipulation is accepted.

2. Respondent's license and registration to practice medicine and surgery in the state of Wisconsin (license no. 43278-20) is **SUSPENDED** for thirty (30) days from the date of this Order.

3. Respondent's license and registration to practice medicine and surgery in the state of Wisconsin (license no. 43278-20) is **LIMITED** as follows:

- a. Respondent shall not perform hysteroscopies until Respondent has, at his own expense, successfully completed eight (8) hours of education on the topic of hysteroscopies, including intra-operative and post-operative emergencies and complications, offered by a provider pre-approved by the Board's monitoring liaison, including taking and passing any exam offered for the courses.

- b. Respondent shall submit proof of successful completion of the education in the form of verification from the institution providing the education to the Department Monitor at the address stated below. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or Department, and also may not be used in future attempts to upgrade a credential in Wisconsin.
- c. The Board's monitoring liaison may change the number of credit hours and/or education topics in response to a request from Respondent. The monitoring liaison may consider the topic availability and/or hours of education when determining if a change to the ordered education should occur.
- d. Respondent shall not perform hysteroscopies until Respondent read and reviewed the following articles. Respondent shall report to the Department Monitor, at the address below, when he has completed this requirement.
 - i. "Complications of Hysteroscopic Surgery", Michael Baggish.
 - ii. "Hysteroscopy in Gynecologic Malignancy", Michael S. Baggish, Hubert Guedj.
 - iii. "Hysteroscopy and Cytology in Endometrial Cancer", Bradley, William H. et al, OBGYN:104(5part1):1030-1033, November 2004.
 - iv. "Complications of Hysteroscopy: A Prospective, Multicenter Study", Jansen, Frank Willem et. al., OBGYN 96(2)266-270, August 2000.

4. Within ninety (90) days from the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$1,524.00.

5. Any requests, petitions, payments of costs (made payable to Department of Safety and Professional Services), and other information required by this Order shall be submitted to:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 266-2112; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

Respondent may also submit this information online at: <https://dspsmonitoring.wi.gov>.

6. In the event Respondent violates any term of this Order, Respondent's license and registration (no. 43278-20), or Respondent's right to renew his license and registration, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order. The Board may, in addition and/or in the alternative refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

7. This Order is effective on the date of its signing.

WISCONSIN MEDICAL EXAMINING BOARD

By: Stephen A. Wasserman, MD
A Member of the Board

12/21/22
Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

SHAWN W. LAIBLY, M.D.,
RESPONDENT.

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STIPULATION

ORDER 0008309

Division of Legal Services and Compliance Case No. 22 MED 104

Respondent Shawn W. Laibly, M.D., and the Division of Legal Services and Compliance, Department of Safety and Professional Services, stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
- the right to confront and cross-examine the witnesses against Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's own behalf;
- the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
- the right to petition for rehearing; and
- all other applicable rights afforded to Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation. Respondent is represented by Attorney Sean Gaynor.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Medical Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not

accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or Respondent's attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. Respondent is further informed that should the Board adopt this Stipulation, the Board's Final Decision and Order will be reported as required by the National Practitioner Databank (NPDB) Guidebook and as otherwise required by any licensure compact or any other state or federal law.

9. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Shawn W. Laibly, M.D., Respondent
Oshkosh, WI 54904
License No. 43278-20

Date

Sean Gaynor, Attorney for Respondent
Leib, Knott & Gaynor, LLC
219 N. Milwaukee St., Ste. 710
Milwaukee, WI 53202

Date

Carley Peich Kiesling, Prosecuting Attorney
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

Date

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9. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.


Shawn W. Laibby, M.D. Respondent
Oshkosh, WI 54904
License No. 43278-20

Dec 1, 2022
Date


Sean Gaynor, Attorney for Respondent
Leib, Knott & Gaynor, LLC
219 N. Milwaukee St., Ste. 710
Milwaukee, WI 53202

Dec 1, 2022
Date


Carley Peich-Kiesling, Prosecuting Attorney
Department of Safety and Professional Services
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P.O. Box 7190
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12/1/22
Date